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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1205~~ 123

VIRGINIA WILLYS LUCOM and WILSON C. LUCOM,
Petitioners,

v.

ATLANTIC NATIONAL BANK OF WEST PALM BEACH, FLORIDA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CHARLES M. TRAMMELL
1730 K Street, N. W.
Washington, D. C. 20006

EUGENE GRESSMAN
1730 K Street, N. W.
Washington, D. C. 20006

Counsel for Petitioners

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioners herein, Virginia Willys Lucom and her husband Wilson C. Lucom, respectfully pray that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fifth Circuit in the above-entitled proceeding.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, rendered on December 10, 1965, is reported at 354 F. 2d 51 and is reprinted in Appendix A hereto, p. 1a, *infra*.

The opinion of the United States District Court for the Southern District of Florida granting summary judgment for the respondent on the basis of res judicata and limitations, rendered on August 8, 1963, is not reported. It is reprinted in Appendix B hereto, p. 9a, *infra*.

For the convenience of the Court, the opinion of the Supreme Court of Florida in *Lucom* v. *Atlantic National Bank*, 97 So. 2d 478, is reprinted as Appendix C hereto, p. 25a, *infra*.

JURISDICTION

The judgment of the Court of Appeals was entered on December 10, 1965. On February 28, 1966, Mr. Justice Black signed an order extending the time for filing this petition for writ of certiorari to and including May 9, 1966. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Where, within one year following the final discharge of a guardian of property, a former ward and her husband file a damage action against that guardian in a federal district court in Florida, alleging that the appointment of the guardian was void and was part of a fraudulent scheme to deprive the ward of the use, possession and enjoyment of her property in violation both of the Fourteenth Amendment of the Federal Con-

stitution and state law, is such an action barred under any of the following Florida limitations statutes:

(1) Fla. Stat. § 746.14, permitting actions by former wards against discharged guardians if "commenced within one year from the date of the discharge,"

(2) Fla. Stat. § 95.11(5), permitting an action for relief grounded in fraud if commenced within three years after the discovery of the facts constituting the fraud, particularly where the court precludes the use of newly discovered evidence of fraud and precludes a jury determination of when the facts were discovered, or

(3) Fla. Stat. § 95.11(4), permitting an action for relief not otherwise specifically provided for, if commenced within four years?

STATUTORY PROVISIONS INVOLVED

Florida Statutes Annotated:

95.11. Limitations upon actions other than real actions. Actions other than those for the recovery of real property can only be commenced as follows:

. . . . . .

(4) WITHIN FOUR YEARS.—Any action for relief not specifically provided for in this chapter.

(5) WITHIN THREE YEARS.—

. . . . . .

(d) An action for relief on the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

746.14. Order of discharge. Upon the consideration of the application for discharge and of the

objections thereto, if any, and of the evidence, if the county judge is satisfied that the guardian has faithfully and completely discharged his duties and has rendered complete and accurate final returns and has delivered the assets of the ward to the person entitled thereto, the county judge shall enter an order of discharge. Such discharge shall operate as a release from the duties of the guardianship and as a bar to any suit against said guardian or his surety, unless such suit is commenced within one year from the date of the discharge.

STATEMENT OF THE CASE

On October 9, 1962, the petitioners herein[1] filed a complaint in the United States District Court for the Southern District of Florida. The complaint sought damages from the respondent Atlantic National Bank, as a former guardian of property, in the amount of $1,250,000 stemming from an alleged wrongful taking, misuse and deprivation of use of the petitioner wife's property. R. I 8-11.[2] The claimed damages were later raised to $2,050,000 compensatory and $5,000,000 punitive. Jurisdiction was alleged on the basis of diversity of citizenship and the existence of a federal question under the Fourteenth Amendment. R. I 8.

The basic cause of action, as stated in the amended complaint, was twofold in nature: (1) the guardianship, being absolutely void under Florida law, had

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[1] The petitioner wife, Virginia Willys Lucom, is the daughter of the late John North Willys, founder of the Willys Overland Motor Co. The petitioner husband, Wilson C. Lucom, is the former Deputy Chief of Mission, United Nations Relief and Rehabilitation Administration. They were married in May 1954.

[2] References to three-volume printed record appear herein as renumbered by the Clerk of the Court of Appeals: R. I, R. II, and R. III.

damaged the petitioner wife in the use, possession and enjoyment of her property; and (2) the guardianship, being an integral part of a conspiracy to deprive the petitioner wife of the full use of her property by having her declared mentally ill and incompetent, had resulted in gross humiliation, embarrassment and distress to the petitioners. R. I 18-19, 279-281. A second and previously undiscovered conspiracy, as revealed by subsequently discovered evidence, was said to involve a plan to incarcerate the petitioner wife in a mental institution and to annul her marriage to the petitioner husband. This scheme, joined in by the respondent bank and the petitioner wife's children, occurred at a time when the respondent bank concededly knew that the petitioner wife was competent and able to manage her own property. R. II 135-141, 169, 266-270; R. III 401-407.

The various events leading to the judgment below that the action was barred by Florida limitations law may be summarized as follows:

(1) In 1952, prior to the events involved in this action, the petitioner wife's son—John de Aguirre—had requested and received $50,000 from her to start a new business for himself. He then demanded large additional amounts of money from her to save his failing business interests, causing her mental distress. After her refusal to accede to such demands, the son began efforts to seize control of her financial affairs by having her declared mentally incompetent. R. I. 480-487. These efforts resulted in a declaration of incompetency by a Florida judge in 1952, the appointment of guardians of her property, and her short confinement in Philadelphia Hospital for Mental Diseases in Philadelphia, Pa. Following her release she was declared

competent and the guardians were discharged. See R. I 45, 484-488. And upon her release, the son renewed his demands for money, leading to the events here involved.

(2) In September 1953, the petitioner wife was sui juris and a resident of and a substantial property owner in Florida. At that time, as a part of the son's continuing plan to gain control of his mother's property and to secure the money he needed, the petitioner wife was induced by "friends" to accompany them to New York on a pleasure trip. When the plane arrived in Newark, New Jersey, they went by automobile not to New York but to Philadelphia, where the petitioner wife was taken against her will to the mental hospital where she had previously been. R. I 368. After her incarceration there, the son continued to demand $75,000 from her; upon her refusal he succeeded in obtaining $10,000 without her authority from her brokerage account in New York. The same Florida law firm which represented the son in these various efforts to obtain money from the petitioner wife also became counsel to the respondent bank when it was later appointed guardian of the petitioner wife's property interests. R. I 110; R. II 357.

(3) In the meantime her "friends" ostensibly sought her release from the mental hospital, pursuant to a pre-determined plan to institute a non-adversary and non-contested proceeding wherein a declaration of mental incompetence would be made. They accordingly filed a habeas corpus petition in the Common Pleas Court in Philadelphia. That court, without any citation or notice having been given the petitioner wife, denied the writ and found her mentally ill and in need

of hospitalization within the definitions of the Pennsylvania Mental Health Act of 1951. R. I 50. But the court, while noting the importance of protecting the petitioner wife's property and being advised that "proceedings in Florida have been instituted to achieve this end," R. I 50, declined to find her incompetent to manage her own affairs.[3] This Pennsylvania habeas corpus proceeding was for the stated purpose of obtaining an ex parte adjudication of incompetency—which the court refused to make—as a foundation for the appointment of a guardian of her property in Florida in violation of the requirements of Florida law requiring incompetency to be adjudicated in an adversary proceeding. R. I 181; R. II 308-309, 447, 450, 456.

(4) Shortly thereafter, on October 7, 1953, the County Judge of Palm Beach, Florida, entered an order appointing the respondent bank as guardian of the property of the petitioner wife. R. I 52. This

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[3] The Pennsylvania Mental Health Act does not define mental illness as the equivalent of mental incompetency or to include one's incapacity to manage one's affairs. And the Pennsylvania court had declined to find her incompetent or incapable in that sense

"Mental illness" is defined in that Act to mean only an illness which so lessens the capacity of a person to use his customary self-control, judgment and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under care; the term "mental illness" includes "insanity," "mental disease," "mental disorder" and all other types of mental cases, but does not include "mental defectiveness." Pa. P.L. 141, June 12, 1951, § 102(11).

As the Court of Appeals below remarked (see p. 2a, *infra*), "An adjudication of 'incompetency' would necessarily have been under a different statute"—i.e., Pa. P.L. 158, June 28, 1951, § 102(3), which defines an "incompetent" to be one who, because of mental illness or deficiency, is unable to manage his property.

order was based upon a petition filed by the wife's two children, which petition (a) stated under oath that she was a permanent resident of Florida, at a time when she was a patient in a mental hospital in Philadelphia, (b) stated that she had been found mentally ill within the definition of the Pennsylvania Mental Health Act, (c) failed to allege any prior adjudication of incompetency in Florida or any other State, as required by Fla. Stat. §§ 744.31 and 744.19, (d) requested that a guardian be appointed to manage her property, alleged to be of the value of $1,750,000, and (e) waived any preferential right to such appointment in favor of the respondent bank. R. I 53.

(5) The appointment order, however, was erroneously premised on the theory that the petitioner wife was a "non-resident incompetent," despite the knowledge of all concerned that the petitioner wife was a Florida resident who had not been judicially declared to be mentally incompetent. See R. II 310-311. And no attempt was made to comply with the requirements of Florida law that a separate incompetency proceeding in Florida precede any appointment of a guardian of the property of a Florida resident.[4] Nor was there any compliance with the provision of Florida law that the appointment of a resident guardian for the property of a "nonresident incompetent" be preceded by a separate incompetency proceeding and determination

[4] Fla. Stat. § 744.31 states, as respects Florida residents, that no guardian of person or property of one alleged to be mentally incompetent "can be appointed until after such person has been adjudicated to be incompetent in separate proceedings instituted for that purpose in accordance with §§ 394.20 to 394.22, inclusive, relating to the adjudication of incompetency." No such "separate proceedings" were ever instituted as to the petitioner wife.

in the state of domicile,[5] the Pennsylvania court having declined to make such a determination. Under these circumstances, there having been no prior adjudication of mental incompetency in any State, Florida law (Fla. Stat. § 744.31) absolutely forbids the appointment of a guardian of property and renders any such appointment null and void.

(6) Upon an ex parte motion by the respondent bank to cure the erroneous factual basis of the appointment order, the County Judge on November 17, 1953, entered an order declaring that the petitioner wife at all relevant times had been a legal resident of Florida and striking from the record and from the appointment order any and all references to her being a "nonresident" of Florida. R. I 56-58. This order also noted, correctly, that she had been adjudicated to be mentally ill by the Common Pleas Court in Pennsylvania. But this order did nothing to cure the voidness of the appointment order stemming from the absence of a prior adjudication in Florida of mental incompetence.

(7) No appeal was taken by the petitioner wife from the void appointment order as corrected, the appeal period having elapsed while she was still incarcerated against her will in the mental hospital in Phila-

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[5] Fla. Stat. § 744.19 requires that a petition for the appointment of a resident guardian for property of a "nonresident incompetent" be accompanied by "a duly certified or exemplified copy of the adjudication of unsoundness of mind or of physical incapacity from the qualified authorities in the state, territory or country where such incompetent is domiciled."

delphia.[6] But at a later date, after the petitioners herein were married, the appointment order was attacked collaterally in the process of protesting the allowance of compensation to the guardian and its attorneys. The County Judge who had issued the appointment order reserved ruling on, and never did specifically resolve, the claim that the order was void under Florida law. He overruled generally all objections and proceeded to award compensation. This compensation order, as indicated below, was appealed to the Florida Supreme Court.

(8) On May 25, 1955, the County Judge overruled petitioners' objections to the respondent guardian's accounting and to the allowance of compensation. He entered a conditional order approving certain of the guardian's accounts that had been submitted for stated periods from May 31, 1954, to and including May 24, 1955,[7] and reducing from $140,000 to $65,000 the amount of compensation payable to the guardian and its attorneys. R. I 85-87, 465. That order provided that the guardian would be released and discharged by a subsequent order only after the compensation had been paid and the property returned to the ward. But the payment of compensation was stayed pending an appeal first to a Circuit Court and then to the Supreme Court

[6] The petitioner wife had also been advised by the guardian ad litem that the Florida proceeding "in no way attempts to have you declared incompetent, so you will not have the heartbreaking experience of going through the red tape to be restored to your civil rights when you are well." R. I 315.

[7] That this was not a final accounting, permitting a final and unconditional discharge, is shown by the fact that a "Supplement to Final Accounting," exhibiting debits and credits and the balance on hand as of October 5, 1961, and covering the period from May 24, 1955, to October 5, 1961, was filed on October 10, 1961. R. I 121-124.

of Florida. R. I 214-215. Such compensation was not finally determined and paid until June 1961, when the Supreme Court of Florida authoritatively determined that the fees should be further reduced. *Lucom* v. *Potter,* 131 So. 2d 724; R. I 167.

(9) In the meantime, the petitioner wife established residence in New York following her release from the mental hospital in December 1953 and her marriage to the petitioner husband in May 1954. In October 1954 she was adjudicated by a New York court to be competent to manage her person and property, thereby releasing her New York bank and brokerage accounts that had been tied up as a result of the Florida guardianship. R. I 67.

(10) On September 20, 1957, after the County Judge's order had been affirmed by the Circuit Court (R. I 98), the Supreme Court of Florida affirmed with modifications the accounting and the order awarding compensation to the guardian; but the order awarding fees to the guardian's counsel was reversed and remanded. *Lucom* v. *Atlantic National Bank,* 97 So. 2d 478 (Fla.); see Appendix C hereto, p. 25a, *infra.* Conceding that there was "some merit" to the contention that the adjudication of mental illness is not the equivalent of an adjudication of incompetency insofar as property management is concerned, the Florida court expressly refrained from adjudicating the validity of the appointment. It merely held that the respondent bank was at least a guardian de facto and as such was entitled to compensation for services rendered in good faith, whether the guardianship was valid or invalid. But the cause was remanded for a complete redetermination of the compensable services rendered by the attorneys.

(11) Further controversy as to the amount of attorneys' fees ensued on remand, culminating in a second appeal to the Supreme Court of Florida. *Lucom* v. *Potter,* 131 So. 2d 724 (Fla.); R. I 167-173. That appeal, resolved in June 1961, resulted in a substantial reduction of the contested fees. R. I 173. Then and only then were the fees actually paid to the guardian and its attorneys.

(12) On October 10, 1961, the respondent bank filed a "Supplement to Final Accounting" covering the management of the property from May 24, 1955, to October 5, 1961 (R. I 121-124). This report indicated that various amounts, totalling $2,220.57, had been debited and credited to the estate over that period of time.

(13) Following the receipt of this final accounting, the County Judge of Palm Beach County on October 11, 1961, entered an order finally discharging the respondent bank as guardian of the petitioner wife's property. R. I 129-130. This order recited that the conditions set forth in the conditional order of May 25, 1955, "have since been complied with." R. I 129. This was a reference, of course, to the payment of compensation to the guardian and its attorneys following the June 1961 decision of the Supreme Court of Florida in *Lucom* v. *Potter,* 131 So. 2d 724. And, in language virtually identical to that in Fla. Stat. § 746.14, the order recited that the guardian had "faithfully and completely discharged" its duties and "rendered complete and accurate final returns and has delivered all assets of the ward to the ward." R. I 129-130. But in fact the respondent bank still has not, by its own admission, returned to the petitioner wife a $15,000 check of hers which the bank had acquired as guardian, a

matter which has subjected her to a still-pending law suit in New York. R. II 206, 209, 212.

Within one year following this "final" discharge—i.e., on October 9, 1962—the petitioners filed their complaint in the instant proceeding in the federal district court for the Southern District of Florida. R. I 8, 15. The timeliness of this filing was predicated on (1) the provisions of Fla. Stat. § 746.14, which provides that a suit against a discharged guardian may be brought "within one year from the date of the discharge," and (2) the provisions of Fla. Stat. § 95.11, which provides for a four-year limitation period for actions not otherwise "specifically provided for." Petitioners' theory was that neither of these limitations periods could begin to run until the final accounting was approved and the guardian finally discharged in October 1961.

Various proceedings then ensued in the District Court, the most relevant of which led to the entry of a summary judgment in respondent's favor. See Appendix B hereto, p. 9a, *infra*. The District Court, after finding that there were no genuine issues of material facts, held that the petitioners' claims were barred as a matter both of (1) res judicata, the prior decision of the Supreme Court of Florida (*Lucom* v. *Atlantic National Bank*, 97 So. 2d 478) having determined that the guardianship was valid on a de facto basis,[8] and (2) Florida limitations law, the special limitations period provided by Fla. Stat. § 746.14 not operating to super-

[8] The District Court misinterpreted the opinion of the Supreme Court of Florida as determining that the guardianship proceedings were not void for lack of federal due process. But the opinion of the Supreme Court, see Appendix C hereto, reveals no such ruling; indeed, it did not even discuss such a point, which had not been raised or presented before it.

cede or toll the general limitations periods provided by Fla. Stat. § 95.11.

Among other orders entered by the District Court was one denying petitioners relief from the summary judgment insofar as it related to the portion of the complaint charging fraud and conspiracy. R. II 608-609. The motion seeking such relief had been filed under Rule 60(b) of the Federal Rules of Civil Procedure and was premised on evidence alleged to be both material and newly discovered. And among such evidence, newly discovered in 1963 and 1964, was an exhibit from the records of the respondent bank, indicating that the bank as guardian knew of the plan of the children to have the petitioner wife committed to a mental hospital, to have a guardian of her person appointed while it was already guardian of her property and to have the marriage of the petitioners annulled. R. II 141. Indeed, representatives of the respondent bank actually drew up and signed a petition to accomplish those purposes, R. II 266-269, even though the representatives of the respondent bank were on record at that time that the petitioner wife was eligible to be restored to her civil rights and was "fully competent to take charge of and handle her own affairs," R. II 406-407. This evidence, which flatly contradicted earlier denials that the bank knew of this plan, allegedly showed the bank's involvement in and knowledge of the conspiracy.

The Court of Appeals for the Fifth Circuit affirmed the various orders appealed to it, including the summary judgment order and the denial of the motion under Rule 60(b). See Appendix A hereto, p. 1a, *infra*. The affirmance of the summary judgment order, however, was based solely in terms of the Florida limita-

tions law, the court finding it "unnecessary to decide whether the action is also barred by the prior litigation in the state courts." Footnote 22 of the opinion, p. 8a, *infra*. On the theory that the cause of action accrued no later than 1955, when the conditional order discharging the guardian was entered, the court held that the action was barred under the general statute, Fla. Stat. §95.11, which provides a three-year period for actions involving fraud and a four-year period for actions not otherwise specified. And the court concluded that this action, instituted in 1962 within one year after the final discharge, was not saved by the special Florida statute, Fla. Stat. § 746.14, permitting actions against guardians within one year from the date of the guardian's discharge (which here occurred in 1961). Florida law was construed to mean that if the general limitations period has run, a special limitations period will not operate to allow a suit thus barred under the general limitations statute.

The court further held that the limitations period of three years relative to actions grounded on fraud (Fla. Stat. § 95.11 (5)(d)) had expired since the basic elements of the asserted fraud related to the procurement of the guardianship in 1953 and had been asserted in the collateral attack on the guardianship at that time. The newly discovered evidence as to fraud and conspiracy was held to be largely cumulative and hence equally barred by limitations.

Finally, the Court of Appeals stated that no federal cause of action had been asserted since there was no state action involved and none of the actions complained of were done under color of law. That statement, however, was in the nature of dicta since the decisive and the major matter resolved was the limitations question.

REASONS FOR GRANTING THE WRIT

1. THIS CASE INVOLVES A PROBLEM OF MAJOR NATIONAL SIGNIFICANCE—THE RIGHT OF THOSE ACCUSED OF MENTAL ILLNESS TO DEFEND AND PROTECT THEIR BASIC CIVIL RIGHTS.

While the judgment below is cast in terms of the impact of Florida limitations law upon a diversity suit in a federal court, the basic problem involved is of far greater significance and substantiality. The limitations questions which petitioners ask this Court to review must be assessed, for certiorari purposes, in the context of a problem of major national concern—i.e., the right of those confined for reasons of mental illness to seek to vindicate their civil and constitutional rights.

These petitioners, particularly the petitioner wife, stand here as proxies for literally millions of American citizens suffering mental illness in one form or another, most of whom are too poor or are otherwise unable to seek the vindication of their rights. As demonstrated in 1961 in hearings before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee,[9] the plight of the mentally ill in their effort to preserve and protect their civil and constitutional rights is "the most neglected area in the law" and constitutes a problem of "widespread national concern." In Senator Wiley's words,[10]

> "Let me remind those present here that over 250,000 people are committed to mental institu-

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[9] Hearings before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 87th Cong., 1st Sess., Constitutional Rights of the Mentally Ill, Part 1—Civil Aspects (March 28, 29 and 30, 1961), pp. 1-13.

[10] *Ibid.*, p. 11.

> tions each year, three times as many as are sentenced to State and Federal prisons. About 800,000 patients are kept in mental institutions, more than four times the present prison population. These people are not criminals. Nevertheless in most cases they are held involuntarily and are deprived of civil rights by either law or circumstances."

The mentally ill, like other citizens, are entitled to the full protection of their constitutional rights. See, e.g., *Baxstrom* v. *Herold,* 383 U.S. 107. But too often their efforts to implement those rights, as well as rights purely civil or legal in nature, are either ignored, trampled or lost through the majestic indifference of the law as interpreted by lower courts. These petitioners seek, in this lawsuit, to overcome several vital areas of that indifference, asserting such rights as (1) the right to recover damages for the humiliation and distress of being the victims of unwarranted and conspiratorial "railroading" into mental institutions, whereby property is then taken pursuant to a void guardianship, (2) the right to the full use, possession and enjoyment of one's property absent any determination of incompetency, (3) the right to the procedural due process protections afforded by relevant state law in the appointment of guardians of property, and (4) the right of privacy, including the right to maintain a lawful marriage. See *Griswold* v. *Connecticut,* 381 U.S. 479.

This, then, is no ordinary, run-of-the-mill diversity case. Nor is this a routine claim of invasion of federal rights. It concerns matters which, through historic indifference, remain at the very frontier of our legal system. It concerns matters which involve untold thousands if not millions of American citizens who

have suffered the loss of civil and procedural rights in the rush to incarcerate them in mental institutions.

And when in this context the claim is made, as it is made here, that the federal courts below have ignored, misinterpreted and misapplied state law, and that the parties have been deprived of both federal and state law rights, that claim deserves the most careful attention of this Court. Petitioners are well aware of the traditional reluctance of this Court to review the frequent assertions of misapplication of state law by federal tribunals.[11] But when the basic matters at stake are truly significant this Court has not hesitated to accept such cases for review. See *Moore* v. *Illinois Central R. Co.*, 312 U.S. 630, 631 (failure to follow applicable state limitations law in damage suit involving collective agreement with interstate railroad); *Dick* v. *New York Life Ins. Co.*, 359 U.S. 437 (failure to follow state law as to burden of proof where effect of failure deprived plaintiff of jury trial).

The implicit importance of this case, justifying review of the questions presented, is self-evident. To grant review of the judgment below is to insure consideration of matters of basic concern to multitudes of citizens, not just to these two petitioners. Only this Court's authoritative consideration and decision can make certain that state limitations statutes are not being improperly interpreted by federal courts to outlaw efforts by those erroneously charged with being mentally incompetent to secure redress for the wrongs inflicted upon them. Legal technicalities such as limi-

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[11] As stated in *Huddleston* v. *Dwyer*, 322 U.S. 232, 237, "ordinarily we accept and therefore do not review, *save in exceptional cases*, the considered determination of questions of state law by the intermediate federal appellate courts." [Emphasis added].

tations for bringing suit and res judicata are precisely the harsh type of legal impedimenta that, if improperly invoked or interpreted, can most effectively destroy cherished constitutional and civil rights. That is the danger, that is the importance to the great numbers of mentally ill citizens, that justifies review by this Court.

2. THE DECISION BELOW APPLIES FLORIDA LIMITATIONS LAW IN A MANNER INCONSISTENT WITH THE PLAIN LANGUAGE OF THAT LAW, THE PERTINENT FLORIDA DECISIONS AND THE GENERAL PRINCIPLES OF INTERPRETATION ENUNCIATED BY THIS COURT.

By its interpretation and application of several sections of the Florida limitations law the Court of Appeals below has rendered a decision that is flatly contradicted by the plain terms of that law and the relevant Florida decisions; and the decision below is one that violates some of the basic rules of statutory interpretation as laid down by this Court. So gross are these inconsistencies as to call for review and corrective action by this Court. See *Moore* v. *Illinois Central R. Co.*, 312 U.S. 630, 631.[12]

A. Section 746.14, the Special Limitations Statute

Fla. Stat. § 746.14 quite clearly provides that the final discharge of a guardian of property shall operate "as a bar to any suit against said guardian or his surety, *unless* such suit is commenced within one year from the date of the discharge." [Emphasis added.] And since the instant suit by the former ward and her husband was commenced within one year from the

[12] Certiorari was granted in *Moore* "to review a judgment in which the Circuit Court of Appeals applied a Mississippi statute of limitations contrary to the Mississippi Supreme Court's application of the same statute to the same plea in the same case." 312 U.S. at 631.

date of the respondent guardian's discharge in October of 1961, § 746.14 gives affirmative recognition to the timeliness of the suit.

Without citing any precedent, the Court of Appeals held that § 746.14 was not here applicable since (1) the invasion of petitioners' rights occurred during the guardianship in 1953 or 1954, (2) computing the start of limitations from either of those dates, the action was barred by either the three-year fraud limitation or the four-year general limitation of § 95.11, and (3) the § 95.11 limitation periods having elapsed, § 746.14's one year period following discharge of the guardian cannot apply since under Florida law "when two statutes limit the time in which an action may be brought, both apply and the dilatory litigant is caught by whichever runs first." Appendix A, p. 4a, *infra*. The Court thereby rejected petitioners' contention that under Florida law the limitations of a special statute prevail over those of a general statute.

With all due deference, the Court of Appeals had completely misread and misapplied Florida law with regard to the application of limitations statutes. This error is apparent from the following considerations:

(1) There is no Florida statute or decision, and the court cited none, stating that when two or more limitations statutes may apply the action is barred by whichever statute runs first. On the contrary, Florida adheres to the general rule of statutory construction, as stated in *Adams* v. *Culver*, 111 So. 2d 665, 667 (Fla.),

> "... that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms. In this situation, 'the

statute relating to the particular part of the general subject will operate as an exception to or qualification of the general terms of the more comprehensive statute to the extent only of the repugnancy, if any.' "[13]

In other words, § 746.14 being a special limitations statute governing suits by former wards against discharged guardians, the limitations period of that statute controls over the limitations terms of the more general statute, § 95.11. Particularly is that true where, as here, the special limitations statute was enacted subsequent to and in light of the general limitations statute.

(2) The Florida decisions cited by the court below in support of its theory that the litigant is barred by whichever limitations period runs first simply do not bear out that proposition. The one cited Florida decision that has applied § 746.14 is *Beck* v. *Barnett National Bank,* 142 So. 2d 329 (Fla.). That case held that the special one-year limitation period of § 746.14 barred a suit, based on a cause of action arising during the guardianship, brought by a former ward three years after the final discharge of the guardian.[14] In so

[13] This same canon of construction has been stated and followed in a host of Florida decisions. See, e.g., *Hisgen* v. *Rileigh,* 115 So. 2d 715, 719 (Fla.); *Wade* v. *City of Jacksonville,* 152 So. 197, 199 (Fla.); *City of Miami* v. *State,* 190 So. 744, 784 (Fla.); *Woodley Lane, Inc.* v. *Nolen,* 147 So. 2d 569, 571 (Fla. App.).

[14] The actual holding of the court reads as follows (142 So. 2d at 329-330):

"The complaint in this cause is clearly founded upon charges of negligence or wilful misconduct or omission on the part of the appellee guardian arising out of the fiduciary relationship existing between the guardian and ward. The allegations do not attempt to establish any cause of action

holding, the Florida court rejected the claim of the ward that the three or four year general limitations periods of §95.11 could be used. In a very real sense, therefore, the *Beck* decision holds—contrary to the ruling below—that the specific provisions of § 746.14 prevail over the general provisions of § 95.11. And the *Beck* ruling in no way made the applicability of § 746.14 turn on when during the term of guardianship the actions complained of took place; the timeliness was computed simply from the date of final discharge.

(3) The decisive impact of the *Beck* decision is made even more apparent by reference to an earlier appeal in the same case, *Beck* v. *Barnett National Bank,* 117 So. 2d 45 (Fla. App.), not cited by the court below. There the Florida District Court of Appeals, speaking prior to the injection of the limitations issue, made plain that the *Beck* suit was not one "brought by a ward against his guardian, but one by a former incompetent ward against a former guardian for damages resulting from a breach of duty committed during guardianship and prior to discharge"—thereby making inapplicable "the restrictions placed by law on the right of a ward to sue his guardian during the period of guardianship." 117 So. 2d at 49. And the court further noted, at p. 50, that under Florida law a

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except as to the guardian's acts or omissions during the period of guardianship. The specific language of F.S. § 746.14 provides that discharge of the guardian shall serve as a bar to *any* suit against said guardian unless such suit is commenced within one year from the date of the discharge. There is no allegation of fraud, concealment, or other type of allegation that could serve to suspend the commencement of the running of the statute. The trial court was correct in applying F.S. § 746.14, and entering summary final judgment for the defendant." [Emphasis in original.]

former ward can maintain a suit against his discharged guardian in connection with matters arising at any time during the former guardianship.

It is fair to conclude that the Florida decisions in the *Beck* suit, which in its concept of a cause of action finds an almost exact parallel in the instant suit, make plain that it could only have been brought *after* the final discharge of the guardian, when the restrictions on the ward's right to sue the guardian had been lifted. And the Florida Supreme Court's application to that suit of the time limitations of § 746.14, regardless of when the guardian's irregularities occurred, only reinforces the conclusion that § 746.14 alone controls the timeliness of the suit. The conflict between the decision below and the *Beck* ruling is thus complete and irreconcilable.[15]

(4) The other Florida decisions cited by the court below as dispositive of the limitations question are either totally irrelevant or contrary to the court's thesis. Thus the decision in *Perry* v. *Reichert,* 113 Fla. 125, 151 So. 403, thought by the court below to be "most nearly in point," involved quite different limitations statutes and held only that a special five-year limitations statute was not intended to be applicable to the facts involved, thereby rendering effective the general three-year statute. No attempt was made,

[15] See also *American Surety Co.* v. *Andrews,* 12 So. 2d 599 (Fla.), where the Florida Supreme Court held that suit could be brought, following a guardian's discharge, by a former ward against the discharged guardian for acts done during the guardianship, although the facts showed that the action would have been barred under the general four-year limitations statute had the suit been brought, by necessity or otherwise, prior to the discharge. The decision was rendered prior to the passage in 1945 of the special one-year limitations statute, § 746.14.

however, to enunciate any doctrine that general statutes prevail over special statutes or that the first statute to run necessarily bars any suit.

Another cited decision is *Palmquist* v. *Johnson,* 41 So. 2d 313 (Fla.), which actually stands for a proposition precisely the contrary to that espoused by the court below. In dealing with limitations statutes not here at issue, the Florida court held that a special four-year statute rather than a general seven-year statute applied to a suit by a tax deed owner to recover possession of realty described in a tax deed. In the court's recognition that a special limitations statute, applicable to a given situation, prevails over a general statute is to be found an approach to reconciling such statutes which is directly contrary to the approach taken by the court below.[16] And in the final cited case, *State* v. *Haddock,* 149 So. 2d 552 (Fla.), the court expressly held that a special statute providing for revocation of a probate order within six months thereof controlled over a general statute applicable to revocation of probate generally at any time prior to discharge of the personal representative. Here again is an instance of the special limitations period being held binding in the face of a more general statute, an approach contrary to that indulged in by the court below.

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[16] The *Palmquist* decision also noted, 41 So. 2d at 316, that "It is a duty of the court to find for apparently conflicting statutes a reasonable field of operation which may preserve the force and effect of each statute and cause them to harmonize, if possible, by a fair, strict or liberal construction thereof." But the court below has destroyed the force and effect of the special one-year statute, § 746.14, as to every situation where the general limitations periods have elapsed by virtue of computing them from dates long prior to the guardian's final discharge.

(5) Finally, the rule of the court below that the seeming conflict between general and special limitations statutes is to be resolved simply by computing which statute runs first is directly contrary to the established rule of this Court, *MacEvoy Co.* v. *United States,* 322 U.S. 102, 107, that

> "However inclusive may be the general language of a statute, it 'will not be held to apply to a matter specifically dealt with in another part of the same enactment . . . Specific terms prevail over the general in the same or another statute which otherwise might be controlling.' *Ginsberg & Sons* v. *Popkin,* 285 U.S. 204, 208."

This rule has uniformly been followed by this Court in interpreting statutes. See *Fourco Glass Co.* v. *Transmirra Corp.,* 353 U.S. 222, 228-229; *Bulova Watch Co.* v. *United States,* 365 U.S. 753, 758; *Townsend* v. *Little,* 109 U.S. 504, 512.

The sum total of the conflicts between the decision below and the Florida law and between the rules of interpretation followed by the court below and by this Court is to throw into utter confusion the limitations law of Florida respecting suits by former wards against discharged guardians. And when that confusion is viewed against the background of the important constitutional and civil rights of the mentally ill, the assertion of which is choked off by the result reached below, the need and appropriateness of invoking this Court's review powers become most compelling.

B. Section 95.11, the General Limitations Statute

The Court of Appeals held, on the erroneous premise that the more general limitations periods of § 95.11 would bar this suit if they had elapsed, that the cause

of action arose either in 1953 or in 1954—thus barring the action either under the three-year fraud section (§ 95.11(5)(d)) or under the four-year general provision (§ 95.11(4)). In so holding, the court below rendered a decision that in several respects conflicts with applicable Florida law and with principles established by this Court.

(1) Under Florida law, as enunciated in the previously described litigation in *Beck* v. *Barnett National Bank,* 117 So. 2d 45 (Fla. App.), and 142 So. 2d 329 (Fla.), a ward can sue his guardian for dereliction of fiduciary duties occurring during the period of guardianship only *after* the guardian has been discharged, the discharge freeing the ward of previous restrictions on the right to sue. Thus, even if the invasions of petitioners' rights occurred in 1953 or 1954, the cause of action was not barred here since suit could only be brought after the guardian's discharge in 1961, and the limitations on the right to sue could not expire until a year after the discharge. And the holding below that the limitations periods of § 95.11 began to run in 1953 or 1954, many years prior to the 1961 discharge, is in direct conflict with the *Beck* decisions.[17]

(2) The conflict between the decision below and the Florida law as to the applicability of the general limitations periods of § 95.11 to a suit of this nature is further highlighted by the principles enunciated by the Florida Supreme Court in *Bloxham* v. *Crane,* 19 Fla. 163, 172; and *Fisher* v. *Guidy,* 142 So. 818 (Fla.).

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[17] If there be any merit to the lower court's theory that the first limitations statute to run bars the suit in question it would apply here only as to causes of actions accruing, under the *Beck* decisions, after the final discharge of the guardian—in which event the special one-year period provided by § 746.14 would elapse before the longer general periods of § 95.11.

The Florida court there ruled that the limitations provisions now codified in § 95 are not available to a guardian in defense against a claim by his ward during the term of a guardianship or trust. "So long as the trust relation existed," said the court in *Fisher,* 142 So. at 820, "the statute of limitations did not begin to run, nor can the doctrine of laches be applied, for the reason that the possession of the trust funds is not adverse to the equitable title of the ward, but consistent with it."

In short, § 95.11's limitations periods are not designed to apply or to start running in favor of the guardian during the term of the guardianship. Thus the ruling below that § 95.11's periods began to run in this case in 1953 or 1954—long before the guardianship terminated in 1961—is in direct conflict with the *Bloxham* and *Fisher* rulings of the Florida court.[18]

(3) Wholly aside from the question of the controlling effect of the special rather than the general limitations statute, the Court of Appeals' failure to recognize that a statute of limitations does not in any event bar a collateral attack on a void judgment—i.e., the guardianship order which was completely lacking any statutory or jurisdictional basis—is so contrary to established law in this Court and in Florida as to call for corrective action forthwith.

Florida law is plain that a void order or judgment may be attacked and set aside at any time in an appropriate proceeding on the theory that the court involved had no jurisdiction to enter it. See, e.g., *Kroier*

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[18] See also this Court's opinion in *Order of St. Benedict* v. *Steinhauser,* 234 U.S. 640, 652, holding that a general Minnesota limitations statute could not begin to run during the term of a trust so as to bar a claim against the trustee.

v. *Kroier,* 116 So. 753, 757 (Fla.); *Einstein* v. *Davidson,* 17 So. 563 (Fla.); *Johnson* v. *McKinnon,* 45 So. 23 (Fla.). The decisions of this Court are equally clear on this point. See *Thompson* v. *Whitman,* 18 Wall. 457; *Pennoyer* v. *Neff,* 95 U.S. 714; *Windsor* v. *McVeigh,* 93 U.S. 274; *McDonald* v. *Mabee,* 243 U.S. 90.

A substantial part of the instant suit involves the voidness of the Florida judge's order appointing the respondent bank as guardian, an order which he was without jurisdiction to enter in the absence of an authenticated adjudication of the ward's mental incompetence.[19] The Court of Appeals' holding that the limitations periods of § 95.11 bar the assertion of such a claim is thus directly contrary to established Florida law, as well as the decisions of this Court, permitting this type of collateral attack at any time.

(4) Under Florida law the running of any statute of limitations is tolled as to fraudulent concealment and withholding of a ward's assets by a guardian until the fraud is actually discovered. See *Dacus* v. *Blackwell,* 90 So. 2d 324, 327 (Fla.); *McCrory Stores Corp.* v. *Lee,* 25 So. 2d 567, 568 (Fla.). But where the facts involving the fraud and the excuses for the delay in discovering that fraud are in dispute, Florida law requires that such issues be determined by a jury. *Metcalf* v. *Johnson,* 113 So. 2d 864, 868 (Fla. App.).[20]

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[19] None of the courts below, federal or state, have passed upon or denied petitioners' claim that the appointment order was in fact void, although the Florida Supreme Court (see p. 27a, *infra*) conceded that there is "some merit" to petitioners' arguments.

[20] The *Metcalf* opinion, quoting from a Georgia case, stated that "where there are facts involving fraud and excuses for delay in discovering the same, the question is one of mixed law and fact, and is a question for determination by the jury under proper instructions from the court." 113 So. 2d at 868.

The Court of Appeals below, however, proceeded to affirm the summary denial of the motion that sought to produce newly discovered evidence of fraud. And it further ruled, without the benefit of any jury determination of the disputed facts, that the alleged fraud had in fact been discovered by the petitioners as early as 1953 and hence was barred by the three-year fraud limitations period of § 95.11. See Appendix A, p. 7a, *infra.* In so ruling, the court below has effectively deprived the petitioners of their right to a jury determination of these fraud issues, a right guaranteed by Florida law. The denial of that right is compounded here by the decisive impact of that denial upon the running of the limitations period.

In these circumstances, the question posed as to the conflict between the decision below and applicable Florida law becomes of such public importance as to warrant the grant of certiorari. This Court has consistently unscored the vital importance of preserving the right to a jury trial in all of its manifold aspects and certiorari has frequently been granted to assure such preservation. See, e.g., *Beacon Theatres* v. *Westover,* 359 U.S. 500, 501 (certiorari granted because "Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care."); *Wilkerson* v. *McCarthy,* 336 U.S. 53, 55; *Rogers* v. *Missouri Pacific R. Co.,* 352 U.S. 500, 501. And review is further justified in order to make sure that those who suffer the charges and the realities of mental illness are not discriminated against

in their right to a jury trial and determination of such issues as limitations.[21]

3. THE COURT BELOW, IN RULING THAT NO FEDERAL QUESTION WAS PRESENTED IN THIS SUIT AGAINST A GUARDIAN APPOINTED BY A STATE COURT, HAS DECIDED AN IMPORTANT ISSUE IN CONFLICT WITH DECISIONS OF THIS COURT.

The Court of Appeals below asserted (see pp. 7a-8a, *infra*) that petitioners' claim that the petitioner wife had been deprived of the possession of her property without due process of law as required by the Fourteenth Amendment stated no federal cause of action against the respondent guardian bank. On the assumption that the bank as guardian was merely a private party, the court concluded that the Fourteenth Amendment bars only state action, not individual misconduct. In so ruling, the court below is in such conflict with decisions of this Court as to make the grant of certiorari most compelling.

There can be no quarrel, of course, with the proposition that the Fourteenth Amendment's proscriptions deal exclusively with state rather than private action. *Civil Rights Cases,* 109 U.S. 3; *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715. But it is also true that "the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment." *Shelley* v. *Kraemer,* 334 U.S. 1, 14; and see *Virginia* v. *Rives,* 100 U.S. 313, 318. And it has further been established by this Court that a guardian or administrator "appointed by a state court is an

[21] See *Gulf, Colorado & Santa Fe R. Co.* v. *McClelland,* 355 F. 2d 196 (C.A. 5), where the same court that decided the instant case emphasized the necessity of a jury trial on a limitation issue in a suit for damages by an injured railroad employee.

officer of that court; his possession of the decedent's property is a possession taken in obedience to the orders of that court; it is the possession of the court . . ." *Byers* v. *McAuley,* 149 U.S. 608, 615.[22]

It would therefore follow that the taking of property by a court-appointed guardian is state action for purposes of the Fourteenth Amendment. That conclusion is reinforced by this Court's ruling in *Chaloner* v. *Sherman,* 242 U.S. 455, a decision which must be considered to be in direct conflict with the ruling below.

Like the instant case, the *Chaloner* case was premised both on diversity of citizenship and on a federal question, and was an action for damages against a guardian appointed by a state court. And like the instant case, the *Chaloner* suit alleged that the state court orders appointing the guardian were void and that the guardian's custody of the ward's property had been in violation of federal due process of law.[23] This Court's statement, 242 U.S. at 457, that it had "jurisdiction to review the whole case"—including the claim that the actions of the court-appointed guardian had violated the plaintiff's rights under the Fourteenth Amendment—reflects a studied acknowledgement that

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[22] To the same effect that guardians appointed by a state court to control property of a ward are officers of that court, see *Redditt* v. *Hale,* 184 F. 2d 443, 446 (C.A. 8); *Martineau* v. *City of St. Paul,* 172 F. 2d 777, 780 (C.A. 8).

[23] There are other factual parallels between the instant case and the *Chaloner* case. For example, the *Chaloner* suit alleged, as does the instant one, that the ward had been "corruptly lured" from his home and illegally committed to a mental institution. 242 U.S. at 461. But the plaintiff in *Chaloner* was given the chance to prove his charges; the petitioners herein have been denied that opportunity.

a federal claim had indeed been asserted and should be resolved on its merits.[24]

The refusal of the court below to acknowledge the existence of a like claim in this case constitutes, therefore, a direct conflict with the *Chaloner* decision. And the inherent importance of this state action issue, in the light of this conflict, warrants the grant of certiorari.

Proper pleading of a federal cause of action, premised upon such state action and alleging a violation of federal rights, justifies the opportunity to prove one's case on the merits, an opportunity denied these petitioners. See *Conley* v. *Gibson,* 355 U.S. 41, 48; *Foman* v. *Davis,* 371 U.S. 178, 182. Had petitioners been given that chance, they might well have proved an arbitrary intrusion upon their rights of privacy and upon the right to use and enjoy private property as guaranteed by the Fourteenth Amendment. See *York* v. *Story,* 324 F. 2d 450 (C.A. 9), certiorari denied, 376 U.S. 939, holding that a plaintiff stated a cause of action under the Civil Rights Act of 1871, 42 U.S.C. § 1983, in alleging that police officers had arbitrarily intruded upon her privacy in violation of federal due process. And see *Monroe* v. *Pape,* 365 U.S. 167.

CONCLUSION

It need only be added, in conclusion, that the alternative theory advanced by the District Court below in dismissing petitioners' claims, the res judicata theory, affords no basis whatever for sustaining the judgment of the Court of Appeals or for immunizing it from

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[24] The Court in the *Chaloner* case, only because of a record fully developed in a jury trial, was able to conclude on the merits that the plaintiff there had not been denied federal due process of law since there had been proper compliance with the applicable state laws. But in the instant case the failure to comply with state law in appointing the guardian is most blatant and undeniable.

review. The parties, the issues and the determinations in the prior state court proceedings were so entirely different from those here involved as to make res judicata inapposite.[25]

For the various reasons set forth in this petition, certiorari should be granted to review the judgment below. The questions raised herein are of significance not only to these petitioners but to the maintenance of the obligation of federal courts to respect applicable state law. And even more importantly, the issues are critical to the legal well-being of all those incarcerated from time to time for mental illness. It is they who deserve the fullest consideration of this Court in this case, to the end that they can be assured that there will be no legal discrimination against the assertion of their civil and constitutional rights.

Respectfully submitted,

CHARLES M. TRAMMELL
1730 K Street, N. W.
Washington, D. C. 20006

EUGENE GRESSMAN
1730 K Street, N. W.
Washington, D. C. 20006

Counsel for Petitioners

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[25] The Court of Appeals, of course, expressly eschewed reliance on the res judicata doctrine. It did so wisely, for the prior state court proceedings involved only the protests of the ward, the petitioner wife, against certain fees and accounts of the guardian and its counsel. The state courts carefully refrained from passing upon the validity or voidness of the appointment order, as the court below noted; and any event res judicata is inapplicable with respect to a judgment entered without jurisdiction and hence void in nature. *Florida National Bank* v. *Kassewitz*, 156 Fla. 761, 25 So. 2d 271. And the petitioner husband was in no sense a party to those prior proceedings. Not until the instant suit was instituted by both petitioners did the contentions of conspiracy, collusion and fraud come into existence or become ripe for judicial resolution.